IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3748 OF 2003

1) Union of India, through)
the General Manager, Central)
Railway, Chhatrapati Shivaji)
Terminus, Mumbai.)
2) Divisional Railway Manager,)
Mumbai Division, Central)
Railway, Mumbai.)... Petitioners.

Versus

Shri Moni Shankar, Booking)
Supervisor, Mumbai Division,)
Central Railway and residing at)
1-D-19, G.B.G.J. Apartments,)
Sai Babu Nagar, Borivali (W),)
Mumbai - 400 092. ...)... Respondent.

Mr. Suresh Kumar with Ms. Seema for Petitioners.

Mr. G. K. Masand with Smt.S.D.Gulhane for Respondents.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.
DATED : 8TH MARCH, 2006.

JUDGMENT (Per: Kingaonkar, J.):

By this petition, Petitioners impugn order dated 6th January, 2003 passed by the Central Administrative Tribunal (for short "Tribunal") in Original Application No. 283 of 2002.

2. Briefly stated, the facts leading to the present petition are that Respondent No.1 was initially appointed as a Trains Clerk on 27th May, 1975 and was promoted from time to time. He was last promoted as Booking Supervisor somewhere in January, 1997 and was transferred to Chatrapati Shivaji Terminus, Mumbai, somewhere in December, 1997. The railway administration had received certain information that Respondent No.1 was indulging in malpractice of overcharging passengers while issuing tickets. In order to verify such information, on 17th April, 1998 decoy check was laid. In the course of such decoy check, it was found that he had overcharged amount of

Rs.5/- for ticket issued to the decoy passenger. Consequently, a Memorandum of events was drawn then and there by the concerned Vigilance Officer.

3. A charge-sheet was drawn and served on Respondent for alleged misconduct of overcharging the decoy passenger and thereby not keeping absolute integrity as a public servant. A regular enquiry was conducted into the charges as per the procedure. The Enquiry Officer came to the conclusion that the charges of misconduct have been duly proved. A copy of the Enquiry Report along with show cause notice was served on Respondent No.1. He made representation and disputed correctness of the Enquiry Report. The Disciplinary Authority, however, accepted findings of the Enquiry Officer and by his order dated 17th November, 1999 imposed penalty on Respondent of reduction to lower pay scale. His administrative representation / revision was rejected.

4. Feeling aggrieved, Respondent preferred Original Application No. 283 of 2002 which came to be allowed by the impugned order of the Tribunal. By the impugned order, the findings of the Enquiry Officer and the penalty imposed came to be quashed.

5. According to the Petitioners, the Tribunal has committed error in appreciation of the facts. The Petitioners further allege that the Tribunal has exceeded its jurisdiction since it has reappreciated the evidence, though it could not have exercised appellate jurisdiction. The Petitioners further submit that there was no procedural irregularity and the enquiry could not be vitiated due to the reasons considered by the Tribunal. The Petitioners seek to assail the impugned order on facts and law.

6. We have heard the learned Counsels for the parties and have carefully gone through the relevant record. The clinching question is as to whether the Tribunal overstepped its jurisdiction while reappreciating the evidence pertaining to the Departmental Enquiry and committed error by finding fault with the procedure adopted during the course of the Departmental Enquiry.

7. The charges laid against Respondent during the Departmental Enquiry are thus:

> "Article - I : Overcharged the decoy passenger by Rs.5/- (Rs.Five) on issue of

one M/E Ticket No. 8148090 Ex. CSTM to Bhubaneshwar.

Article - II : He was found having Rs.199/- (Rs. One hundred ninety nine) short in his railway cash.

Article - III: He declared his private cash in computer that the monetary ceiling for the satisfactory staff, without being certified by the supervisor in the private cash register.

Thus by the above acts of omission and commission he failed to maintain absolute integrity devotion to duty and acted in a manner unbecoming of a railway servant and thereby contravened the provision of Rule No.3.1(ii) and (iii) of Railway Services Conduct Rules, 1966."

8. There is no dispute about the fact that a regular Departmental Enquiry was conducted against Respondent after service of charge-sheet dated 22nd December, 1998. Respondent challenged the findings of the

Enquiry Officer on the ground that the decoy passenger did not report alleged overcharging on the spot itself and there was no independent witnesses to prove that the passenger was overcharged amount of Rs.5/- while issuing the ticket. The Tribunal came to the conclusion that there is no independent evidence regarding overcharging of Rs.5/- and the trap was not laid according to the procedure envisaged under the relevant rules.

9. Now, on going through the impugned order, it is amply clear that the Tribunal has undertaken exercise for reappreciation of the evidence. The Tribunal rejected evidence of the witness who watched the transaction on spacious ground that he was standing at distance of about thirty (30) feet from the booking window. In the absence of evidence to show that such a distance could cause loss of visibility and audibility, out right rejection of his evidence is improper. Moreover, the witness blurted out about such distance by his approximation without measurement thereof. The relevant trap was laid in the presence of RPF personnel. The Tribunal discussed the evidence in paragraph 18 of its order and has lastly observed : **"It cannot therefore be said that it was established**

beyond doubt that the applicant had overcharged Rs.5/- from decoy passenger".

10. Not only that the Tribunal has reappreciated the evidence as if it is an appellate authority but appears to have applied incorrect standard of proof for substitution of its own conclusion/finding. It is well settled that in Departmental Enquiry the standard of proof required is only of *"preponderance of probability".* There cannot be a requirement of proof beyond doubt as appears to have been expected by the Tribunal. Even in the case of a criminal trial the requirement is of proof beyond a reasonable doubt but the Tribunal appears to have applied standard of proof reaching to the hilt i.e. reaching point "beyond doubt". Needless to say the Tribunal has committed jurisdictional error while reappreciating the whole facts and reaching its own conclusions on application of erroneous yardstick of required amount of proof in the Departmental Enquiry. It follows that the findings of the Tribunal are improper and incorrect due to such wrong approach.

11. In case of **Commissioner and Secretary to the Government and Others v/s C. Shanmugam** ((1998) 2 SCC

394, the Apex Court has held that the Tribunal cannot reappreciate evidence while exercising power of judicial review. In **State of Tamil Nadu vs. S. Subramaniam** ((1996) 7 SCC 509) the Apex Court has observed as follows :

> "The only question is : Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested in the Tribunal by the Central Administrative Tribunals Act. It is settled law that the tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical

rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court of the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would *(sic)* come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."

12. For a brief moment, even assuming that the Tribunal could have made re-appraisal of the evidence yet it is difficult to sustain the findings arrived at by it. The Tribunal has observed that in the absence of source regarding demand or excess amount of the ticket it cannot be said that Respondent had demanded excess amount from the decoy passenger for personal gain. The very fact that immediately excess amount was found with Respondent is itself enough to give rise to the presumption that it was recovered from the decoy passenger. The question is not of "demand from the decoy passenger" but it is of malpractice to recover excessive amount while issuing tickets at the counter. This type of trap cannot be regarded as akin to the trap contemplated under the Prevention of Corruption Act. The finding of the Tribunal that the witnesses who attended the trap were not reliable because they were from RPF organisation is also unsustainable. It appears that a Constable of RPF No. 1546 was sent as a decoy passenger and he was not attached to Vigilance Department and RPF Head Constable No. 1238 Shri F. Yadav was called as a witness to observe the transaction between Respondent No.2 and decoy passenger i.e. RPF Constable No. 1546. Both of them have corroborated the allegations

in the charge-sheet regarding overcharging of the train ticket. These witnesses had no axe to grind against Respondent No.1. They cannot be discarded only because they are RPF personnel.

13. The Tribunal appears to have relied upon instructions set out under paragraphs 704 and 705 of the Vigilance Manual. Those instructions are as follows:

(a) There must be two or more independent witnesses to hear the conversation to establish that the money was being passed as illegal gratification.

(b) The transaction should be within the sight and hearing of two independent witnesses.

(c) There should be an opportunity to catch the culprit red handed immediately.

(d) Investigating Inspectors should immediately arrange one or more officials (Gazetted and Non-Gazetted) to act as independent witnesses."

Nobody can deny that generally such administrative

instructions should be followed, particularly, when a trap is laid. The instructions further show that the Investigating Inspector should immediately arrange one or more officials (Gazetted and Non-Gazetted) to act as independent witnesses. The safeguards are provided to ensure that false implication of a railway employee can be avoided. These are only administrative instructions for use of the Vigilance Department. They cannot be regarded as mandatory rules or regulations as such.

14. On behalf of the Respondent, learned Counsel submits that the instructions are required to be followed so as to rule out possibility of unjust victimisation. He contended that the Respondent is entitled to get benefit of the fact that the instructions are not fully complied with as per paragraphs 704 and 705 of the Vigilance Manual. This argument of the learned Counsel for the Respondent is unacceptable. In case of **Indramohan Sharma vs The Union of India & Anr.,** (Original Application No. 671 of 2002) the Central Administrative Tribunal of Bombay Bench had accepted identical argument. The matter came up before the Division Bench of this Court in Writ Petition No. 1089 of 2004. The Division Bench

has observed : *"In our view, the argument raised by the learned Counsel for the respondents (Union of India and Sr. Divisional Manager (C)) has some force because it is the known fact that RPF is an independent body and it cannot be in anyway under the control of the vigilance department. RPF personnel are utilised in vigilance check and traps whenever required at the time of arranging check. Some times it happen that gazetted officers are not available, so that the check cannot be postponed for want of gazetted officer. Applicant has not shown anything against RPF staff that they were not impartial or enimical to him."*

In the present case too the Respondent has failed to demonstrate as to how the RPF staff members had any bias against him and how they could not be regarded as impartial witnesses. Therefore, the argument of the learned Counsel for the Respondent that independent witnesses were not picked up and the RPF constable and head constable could not be treated as independent witnesses, has no substance. There appears no serious procedural irregularity committed by the vigilance department while conducting the trap at the relevant time.

15. On behalf of the Respondent, learned Counsel sought to rely upon certain observations of the Andhra Pradesh High Court in case of **Union of India & others vs. M. Anjaneyulu & Anr.** (Writ Petition Nos. 1489 of 2002 and 26165 and 25111 of 2001). A Division Bench of the Andhra Pradesh High Court has held that instructions contained in paragraph 704(a) and 705(b) ought to be observed by the investigating agency and the procedural infraction could be fatal to the decoy proceedings. In the said case, the witnesses had admitted that they were attached to the vigilance wing and their participation in the trap was according to the instruction of the vigilance wing. The observation of the Andhra Pradesh High Court, with due respect, are in relation to peculiar facts of that case and we are not persuaded to go by the same in the present case.

16. One of the reason which found favour with the Tribunal is that the Enquiry Officer had not followed Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules. Rule 9(21) comes into play only if the railway servant has not examined himself. The sub-clause (21) of Rule 9 reads as follows:

"(21) The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."

In case in hand, the Respondent was asked a general question and had explained his stand during the course of Departmental The Tribunal has held that the procedure is mandatory. This view is incorrect. In a similar situation, the Apex Court in case of **Sunil Kumar Banerjee v/s State of West Bengal,** (AIR 1980 SC 1170), had an occasion to consider Rule 8(19) of the All India Services (Discipline and Appeal) Rules, 1969. Rule 8(19) of the All India Services (Discipline and Appeal) Rules is similarly worded. The Apex Court has held that failure to comply with the requirements of Rule 8(19) did not vitiate the enquiry unless the delinquent officer could establish prejudice. The Respondent was fully alive to the

allegations against him and therefore replied all aspects of the allegations in his written defence.

17. We cannot be oblivious of the fact that the procedure envisaged in Rule 9(21) is part of natural justice principle. So, unless the delinquent is able to show prejudice caused due to the non-observance of such rule, it is difficult to say that the enquiry is vitiated due to non-observance thereof. The Tribunal has taken the view that when the questioning was not done as per Rule 9(21) and since it is mandatory the enquiry itself is vitiated. We can not affirm such view. As stated before, the procedure envisaged in rule 9(21) is aimed at affording opportunity to the delinquent of explaining his stand regarding the adverse circumstances. The Respondent had filed his representation after receipt of the enquiry report and gave explanation regarding the amount which was found in his custody. He had declared amount of Rs.200/- as private cash while feeding in computer but was found in possession of only Rs.63/-. There is no explanation about such purposeful suppression of the fact regarding private cash carried by him.

18. We are of the considered view that the Tribunal

had no jurisdiction to reappreciate the evidence and set aside the order of the Disciplinary Authority. The Respondent was not prejudiced, in any way, due to non-observance of Rule 9(21) in stricto-sensu since he was fully aware of the circumstances which appeared against him and could have offered himself for examination or might have explained the circumstances through his written statement. In our opinion, the impugned order is liable to be set aside. We are inclined, therefore, to set aside the impugned order.

19. In the result, the petition is allowed. The impugned order dated 6th January, 2003 passed in Original Application No. 283 of 2002 by the Central Administrative Tribunal is set aside. The order passed by the Disciplinary Authority regarding penalty imposed on the Respondent is restored. Rule made absolute in the above terms. There shall be no order as to costs.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)